

SOUTHERN ENVIRONMENTAL LAW CENTER

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April 14, 2009

U.S. Environmental Protection Agency
Region 4 Freedom of Information
SNAFC Bldg, 61 Forsyth Street, S.W., 9th Floor
Atlanta, GA 30303-8960

VIA U.S. Mail and FACSIMILE: (404) 562-8054

CNTRL NO	4.191	00372-09
Response Due:	5/12/09	Other
APPROD	SECD	EAD
OTHER	OTHER	OTHER

Re: Freedom of Information Act Request - Creek Shoals Estates

Dear Ma'am or Sir:

Under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center ("SELC") requests all documents in the possession or control of the U.S. Environmental Protection Agency ("EPA") that relate to Creek Shoals Estates, which is located near Lyons in Toombs County, Georgia (the "Development"). To our knowledge, the current owners of Creek Shoals Estates are Tommie Williams, Clint Williams, and Darrien Ramsey. It is our understanding that in 2003, the Natural Resource Conservation Service ("NRCS") certified the construction of a 117-acre farm pond ("Pond") that now sits in the middle of the Development. We are requesting all documents related to the Pond and the Development, including but not limited to:

- All documents relating to the NRCS's certification of the Pond as a farm pond and the U.S. Army Corps of Engineer's ("Corps") concurrence with NRCS's determination;
- All Clean Water Act Section 404 permits or Section 404(f) exemptions that the Corps may have issued concerning the Development;
- All correspondence relating to the Pond or the Development, including communications between EPA, the Corps, NRCS, the owners of the Pond or the Development and any of the owners' representatives or consultants, and any other

Environmental Protection Agency, Region 4
April 14, 2009
Page 2 of 3

agency, company, or person that was involved in the construction of the Pond or the Development;

- All EPA records and all field notes to any site inspections made for the Pond or Development; and
- Any photographic analyses, including any photographs, maps, or drawings, that may have been prepared for the Pond or the Development.

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the United States Army Corps of Engineers.

FOIA directs a responding agency to make a "determination" on any request within twenty (20) working days of receipt. See 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. 5 U.S.C. § 552(b). Should our requests be denied, we request that you inform us of the grounds for denial and the specific administrative appeal rights which are available. See 5 U.S.C. § 552(a)(6)(A)(i).

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of waivers. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987); Pederson v. Resolution Trust Corp., 847 F. Supp. 851, 855 (D.Colo.1994); Etlinger v. FBI, 596 F. Supp. 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the "roadblocks and technicalities which have been used by various Federal agencies to deny waivers..." Pederson, 847 F. Supp. at 855.

SELC is a 501(c)(3) non-profit organization with over 20 years of experience disseminating public information regarding Corps regulatory and operations issues. See 5 U.S.C. § 552 (a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved. For example, SELC frequently publishes reports and issues press releases regarding its projects (See e.g., "Where are We Gfowing: Land Use and Transportation in the Greater Richmond Area,"

http://www.southernenvironment.org/cases/vdot_reform/richmond_report.pdf). Lawyers at SELC are interviewed by the media to explain their work and its significance. (See e.g., "Judge Halts Landing Field," Raleigh News and Observer, February 19, 2005, <http://www.newsobserver.com/news/growth/story/2140513p-8522056c.html>). SELC's

Environmental Protection Agency, Region 4
April 14, 2009
Page 3 of 3

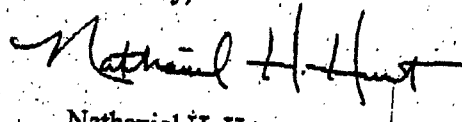
website contains documents generated by SELC for the specific purpose of educating the public on particular issues. (See e.g., "Smart Mobility Report: Review of Tri-County Parkway Location Study," http://www.southernenvironment.org/newsroom/publications/smart_mobility_tri_county.pdf.) SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.

All of this information is available for free to any interested member of the public. SELC staff members also educate the public by speaking at conferences and other public meetings about environmental and natural resource issues in the Southeast. A fee waiver clearly will benefit the general public through increased notice and understanding of the operations of the government and of potential or proposed major policy incentives. SELC further certifies that disclosure of the information sought is not primarily in the commercial interest of the requester.

Should SELC's request for reduced or waived fees be denied, SELC is prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$25. SELC reserves its right to appeal a fee waiver or reduction denial.

If you have any questions regarding this request, please feel free to call me at 404-521-9900. Thank you for your prompt attention to this matter. We look forward to receiving the public records requested.

Sincerely,



Nathaniel H. Hunt
Associate Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, NW (2822T)
WASHINGTON, DC 20460

April 22, 2009

Mr. Nathaniel H. Hunt
Southern Environmental Law Center
127 Peachtree Street, Suite 605
The Candler Building
Atlanta, GA 30303-1800
United States

RE: Request No. 04-RIN-00372-09

Dear Mr. Hunt:

This is in response to your Freedom of Information Act (FOIA) request, 5 U.S.C. 552 seeking records related to all documents along with selected documents that relates Creek Shoals Estates, Toombs County, Georgia and for a waiver of fees in connection with that request.

The FOIA directs agencies to furnish records without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. 552(a)(4)(A)(iii)(1994 & Supp. IV 1998).

Requests for fee waivers must be considered **on a case-by-case basis** and address the requirements for a fee waiver in sufficient detail for the agencies to make an informed decision. In determining whether the statutory requirements are met, agencies must consider six factors in sequence. These factors are summarized below.

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.
3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.
4. The disclosure must contribute "significantly" to public understanding of government operations or activities.
5. The extent to which disclosure will serve the requester's commercial interest, if any.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

Should you wish to receive a fee waiver, you must address, in sufficient detail, these six factors. You may send your response by email to hq.foia@epa.gov, or by facsimile to this office (202) 566-2147. If we do not hear from you within 7 days from the date of this letter, we will deny your request for a waiver of fees based on insufficient justification. Records will be sent if you have provided assurance of payment should fees exceed \$25.00.

If you have any questions, please contact the Requester Service Center at hq.foia@epa.gov, or call 202-566-1667.

Sincerely,

Larry F. Gottesman
National FOIA Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENVIRONMENTAL INFORMATION

May 15, 2009

Mr. Nathaniel H. Hunt
Southern Environmental Law Center
The Candler Building
127 Peachtree Street, Suite 605
Atlanta, GA 30303-1800

RE: Request Numbers 04-RIN-00372-09

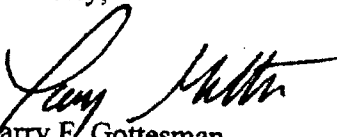
Dear Mr. Hunt:

This is in response to your request for a fee waiver in connection with your Freedom of Information Act (FOIA) request for documents pertaining to the Creek Shoals Estates, Toombs County, Georgia.

We have reviewed your fee waiver justification and based on the information you provided, we are granting your request for a fee waiver. However, this fee waiver does not include a waiver of fees for otherwise publically available records. The US Environmental Protection Agency Region 4 Office in Atlanta, Georgia, will be responding to your FOIA request.

If you have any questions concerning this letter, please contact Monica Lewis of my staff at (202) 566-1667.

Sincerely,



Larry F. Gottesman
National FOIA Officer